

MEMORANDUM

Planning Division



Date: May 25, 2016

To: Planning Commission Subcommittee

From: Bhavani Potharaju, Contract Assistant Planner

Subject: **Minor Conditional Use Permit No. MC16-0008:** A request to allow for ancillary beer and wine sales at an existing restaurant (MOH Burmese and Thai Kitchen).

Location: 1244 S Abel Street, APN: 86-16-099

Zoning/GP: General Commercial (C2) / General Commercial (GNC)

Background:

- On March 31, 2016, Koko Maung submitted an application to allow the sale of beer and wine as part of the dining experience at the MOH Burmese and Thai Kitchen, an existing restaurant located at 1244 S. Abel Street. The sale of beer and wine within a restaurant requires a Minor Conditional Use Permit approved by the Planning Commission Subcommittee.
- The general plan designation, zoning designation, and existing use of the proposed site and surrounding sites can be found below:

	General Plan	Zone	Uses
Subject Site	General Commercial (GNC)	General Commercial (C2)	Liberty Plaza Shopping Center
North	Multi-family Very High Density Residential (VHD)	General Commercial (R4)	Centria Apartments
South	Single Family Low Density (SFL)	Single family Residential (R1)	Single Family Homes
East	Multi-family Very High Density Residential (VHD)	Multi-family Very High Density Residential (R4)	Ilara Apartments
West	Single Family Low Density (SFL)	Single family Residential (R1)	Single Family Homes

- The purpose and intent of the General Commercial (C2) Zoning Designation is to provide for a wide range of retail sales and personal and business services.
- The proposed hours of operations (with beer and wine sales) are for lunch service (11:30am – 2:00pm) Monday – Saturday and dinner service (5:00pm – 9:00pm) on Friday and Saturday.
- The applicant is requesting a Type 41 On-Sale Beer and Wine License from the Department of Alcoholic Beverage Control (ABC) which authorizes the sale of beer and wine for consumption on or off the premises where sold.

- According to ABC, the project falls below the maximum allotted concentration of liquor licenses for the Census Tract in which this project is located (5045.05) which authorizes five (5) On-Sale license permits and currently this census tract has no Type 41 On-Sale Beer and Wine active licenses.
- Based on staff's analysis, the following findings can be made ensuring the project will not be detrimental to the surrounding area and serve the public convenience or necessity:
 - The proposed beer and wine sales is a complimentary service to an existing restaurant (MOH Burmese and Thai Kitchen). There is no separate bar proposed.
 - The project site is located on the General Commercial (C2) Zoning Designation and is surrounded by other complimentary uses. The addition of beer and wine service at this location will provide greater beverage options for the dining customers.
 - Police and Fire Department reviewed and approved MOH Burmese and Thai Kitchen's application for a Minor Conditional Use Permit for beer and wine service.
 - As conditioned, the operator will be responsible for ensuring all employees receive "Responsible Alcoholic Beverage Service" training offered through programs established by the ABC. The operator will also be required to comply with all applicable State and other laws pertaining to the sale of alcohol.
- The project is consistent with the Milpitas General Plan Economic Development policies 2.a-I-3, which directs that the project promotes economic pursuits which will strengthen and promote development through stability and balance *and* 2.a-I-7, which directs that the project provides opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
- The project is exempt from further CEQA review pursuant to Section 15301 (Existing Facilities) because it is an existing restaurant and the addition of on-site consumption of beer and wine in conjunction with food service is considered a negligible change in operation of an existing restaurant use.

Recommendation:

STAFF RECOMMENDS THAT the Planning Commission Subcommittee adopt Resolution No. 16-019 approving Minor Conditional Use Permit No. MC16-0008, MOH Burmese and Thai Kitchen subject to the above findings and the attached conditions of approval.

Attachments:

- A. Resolution No. 16-019
- B. Zoning, Site Location and Site Image
- C. Site Plan and Floor Plan

RESOLUTION NO. 16-019
A RESOLUTION OF THE PLANNING COMMISSION SUBCOMMITTEE OF THE
CITY OF MILPITAS, CALIFORNIA, APPROVING MINOR CONDITIONAL USE
PERMIT MC16-0008 FOR MOH BURMESE AND THAI KITCHEN TO ALLOW BEER
AND WINE SALES LOCATED AT 1244 S ABEL STREET
(APN 86-16-099)

WHEREAS, on March 31, 2016 an application was submitted by Koko Maung, to allow the sale of beer and wine at the MOH Burmese and Thai Kitchen, an existing restaurant located at 1244 S Abel Street (APN 86-16-099);

WHEREAS, the property (APN 86-16-099) is located within the General Commercial (C2) Zoning district;

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission Subcommittee determine this project is categorically exempt; and

WHEREAS, on May 25, 2016, the Planning Commission Subcommittee held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission Subcommittee of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act in that the addition of on-site consumption of beer and wine in conjunction with food service is considered a negligible change in operation of an existing restaurant use.

Section 3: The Milpitas Municipal Code requires approval of a Minor Conditional Use Permit (MCUP) for beer and wine sales ancillary to restaurant uses (XI-10-5.02-8). In order to approve an MCUP, the Planning Commission Subcommittee must make the following findings, per Municipal Code Section XI-10-57.04.F:

- a) The proposed use, at the location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare:
 - 1. The proposed beer and wine sales is a complementary service to the existing food service;
 - 2. The project is located in the General Commercial zone and is surrounded by other commercial and restaurant uses;

3. As conditioned, the operator shall be required to obtain training for servers responsible for serving alcohol; and
4. As conditioned, the operator shall cease the sale and consumption of alcohol by 9:00pm Monday through Saturday.

b) The proposed use is consistent with the Milpitas General Plan.

1. The proposed use is consistent with Milpitas General Plan Economic Development policy 2.a-I-3, which directs “encourage economic pursuits which will strengthen and promote development through stability and balance,” in that promotes economic pursuits; and
2. It is also consistent with Milpitas General Plan Economic Development policy 2.a-I-7, which directs “provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention,” in that issuing the license will enable the restaurant to cater to its customers and establish itself as a dining destination within the City of Milpitas.

c) The proposed use is consistent with the Milpitas Zoning Ordinance.

1. The proposed use is consistent with the Milpitas Zoning Ordinance in that the use is conditionally permitted in the General Commercial Zoning District

Section 4: The Planning Commission Subcommittee of the City of Milpitas hereby adopts **Resolution No. 16-019 approving Minor Conditional Use Permit No. MC16-0008, MOH Burmese and Thai Kitchen, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission Subcommittee of the City of Milpitas on May 25, 2016.

Planning Commissioner

Planning Commissioner

CONDITIONS OF APPROVAL**Minor Conditional Use Permit No. MC16-0008**

A request to add beer and wine to an existing restaurant

1244 S Abel Street (APN: 22-54-002)

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Minor Conditional Use Permit No. MC16-0008 shall have no force or effect unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. (P)
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. (CA/P)
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission Subcommittee on May 25, 2016, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)
16. Sale and consumption of alcohol: The operator shall cease any and all sales and consumption of alcohol by the proposed closing hours. Monday through Saturday 11:30am – 2:00pm, Friday and Saturday 5:00pm – 9:00pm. (P)
16. Responsible Alcohol Training: Permittee shall be solely responsible and liable for ensuring that all employees receive “Responsible Alcoholic Beverage Service” training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for copy and inspection upon City request. (P)
17. Alcoholic Beverage Control Licensing: Permittee shall at all times comply with all applicable State and other laws relating in any way to the sale of alcohol including any California Department of Alcoholic Beverage Control licensing requirements for the sale of alcohol. (P)
18. Litter and Graffiti Prevention: Permittee shall at all times maintain the subject property in a clean and orderly manner, free of litter and graffiti. All litter and graffiti shall be removed and abated on a daily basis. (P).
19. No Loitering Signs: Permittee shall install “No Loitering” signs throughout the subject property to remind customers not to loiter. Permittee shall be solely responsible to enforce the “No Loitering” requirement on the subject property. (P).
20. Advertisements: Advertisements shall be placed and maintained in a manner that ensures that law-enforcements personnel have a clear and unobstructed view of the interior of the premises. (P).

21. Primary Use of Premises: The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The Permittee shall at all times keep records that reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the City on demand.

(P) = Planning

(B) = Building

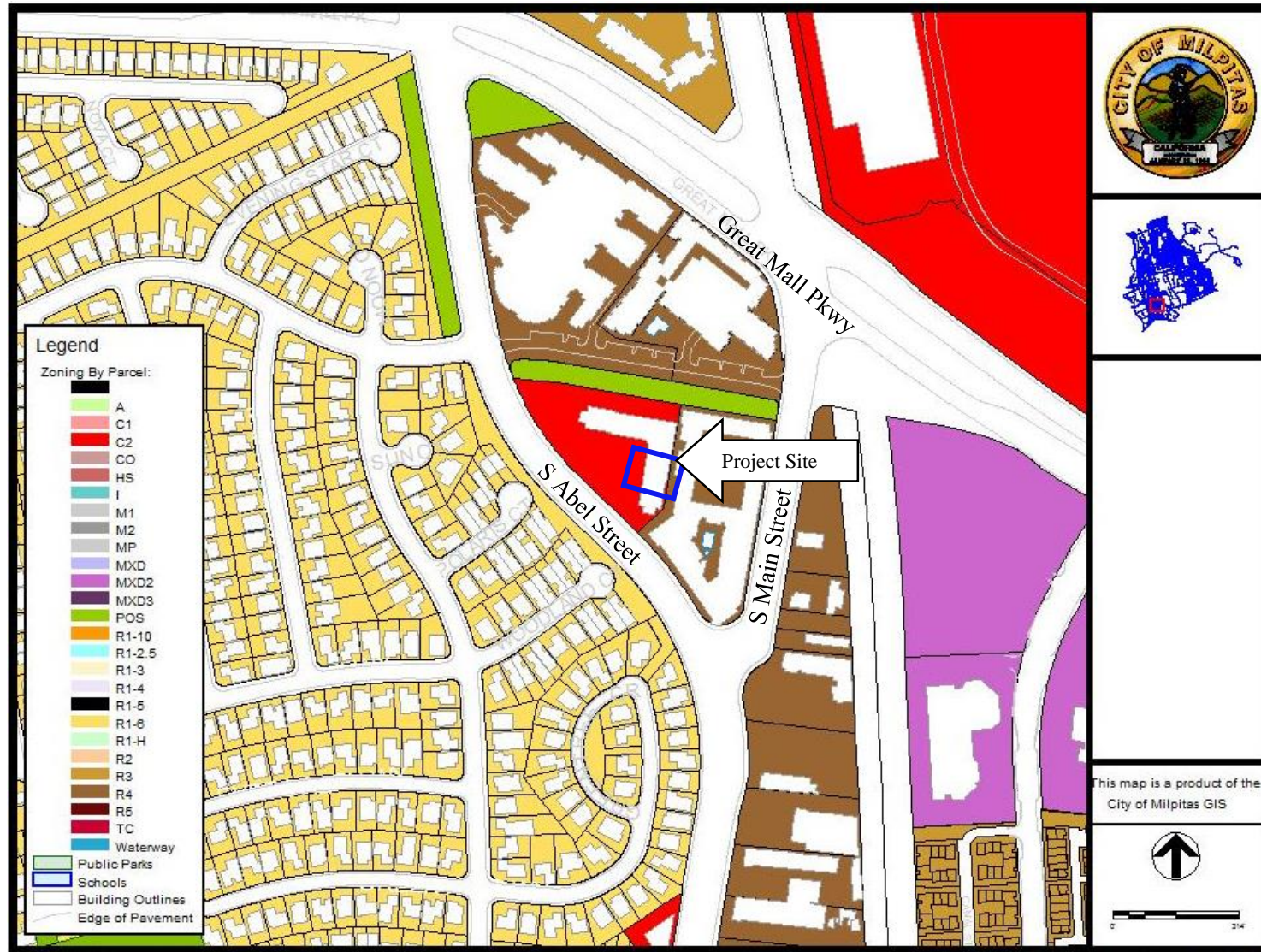
(E) = Engineering

(F) = Fire Prevention (no comment)

(PD) = Police (no comment)

ATTACHMENT B- Zoning Map, Site Location and Site Image

Zoning Map



Site Location

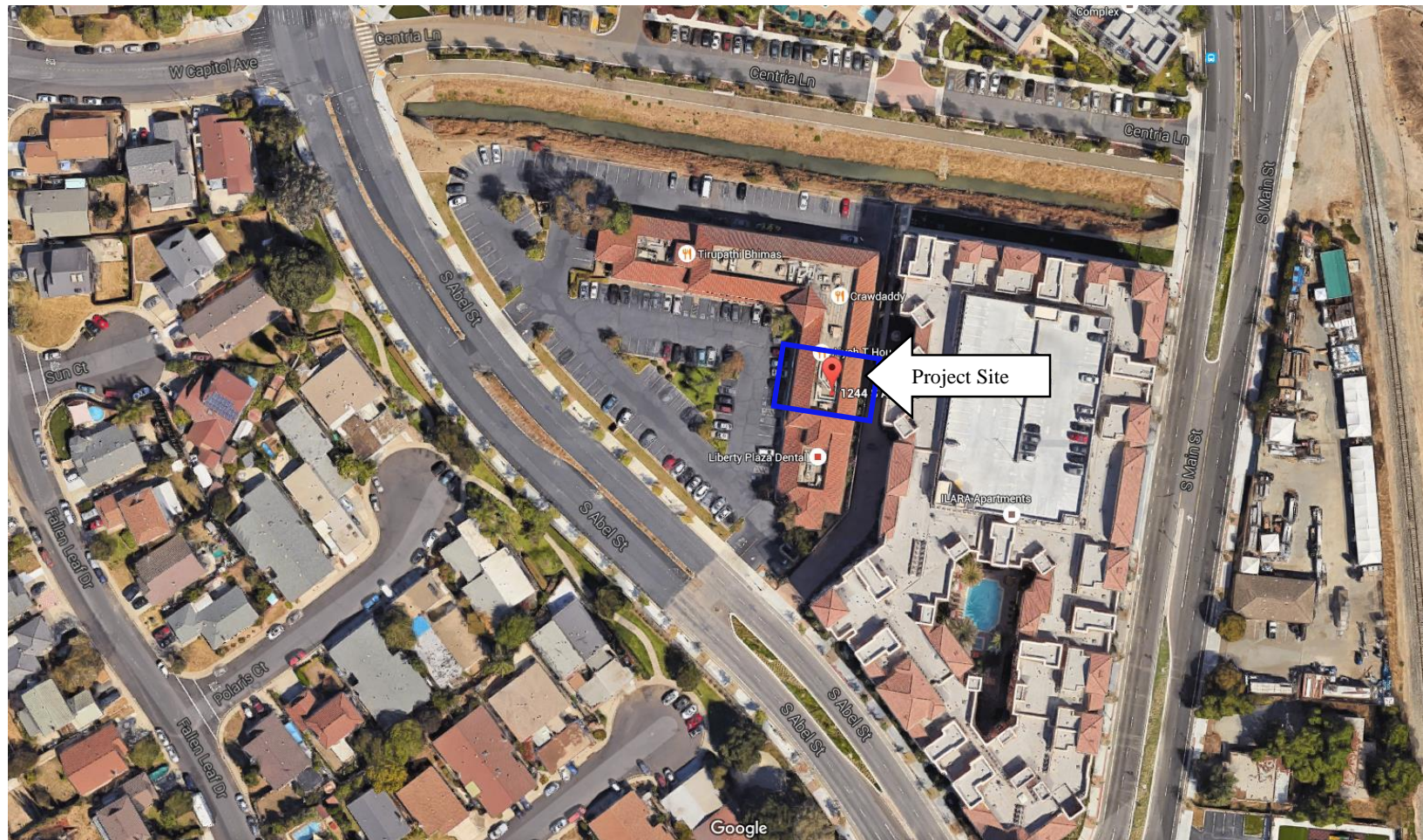


Image of Location





DESCRIPTION
MOH Kitchen
1244 S ABEL ST
MILPITAS, CA 95035

PROJECT
ABC TYPE 41
APPLICATION

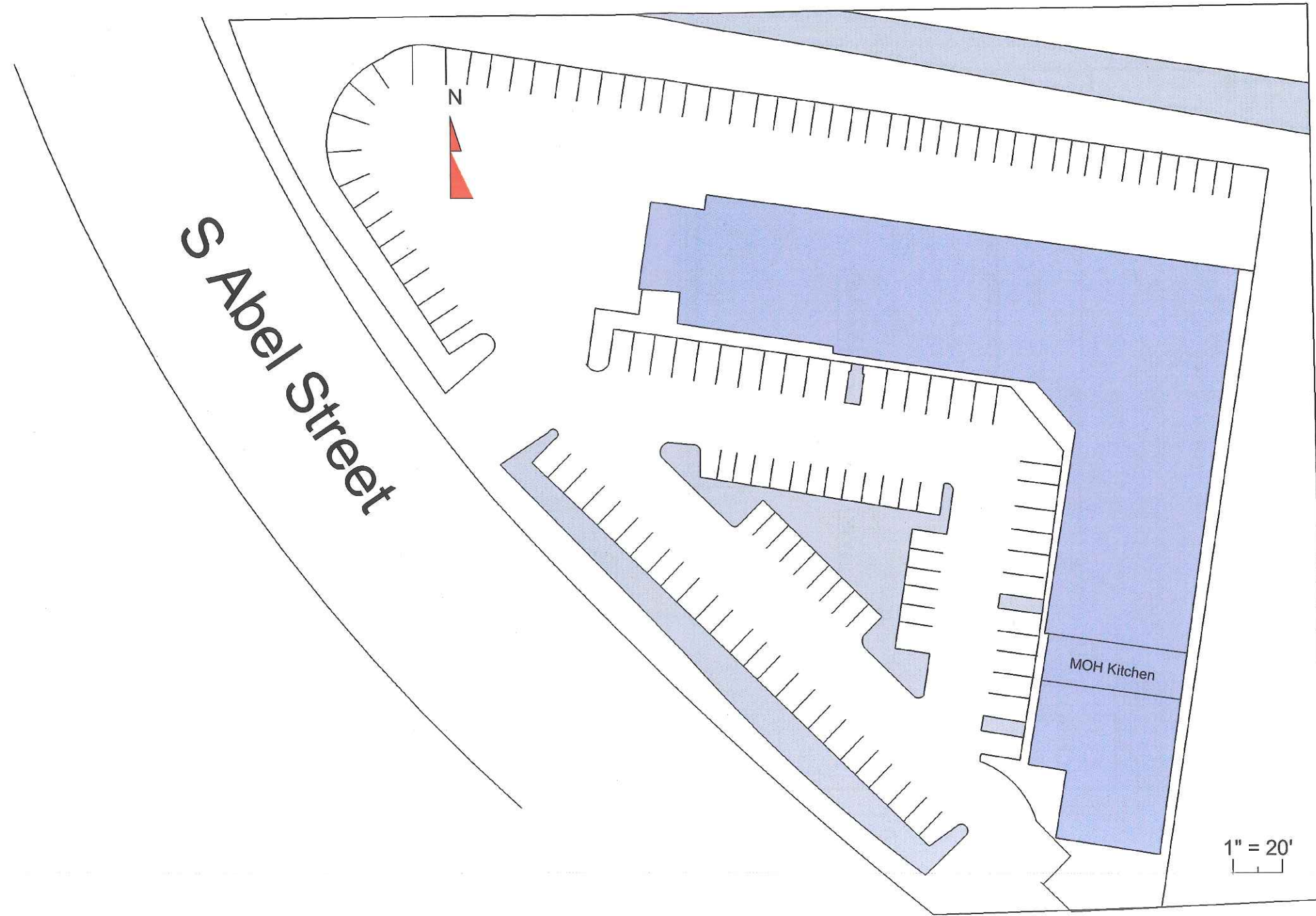
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07.07.2015

CLIENT
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CLIENT
JONGRAK LLC
DBA MOH KITCHEN

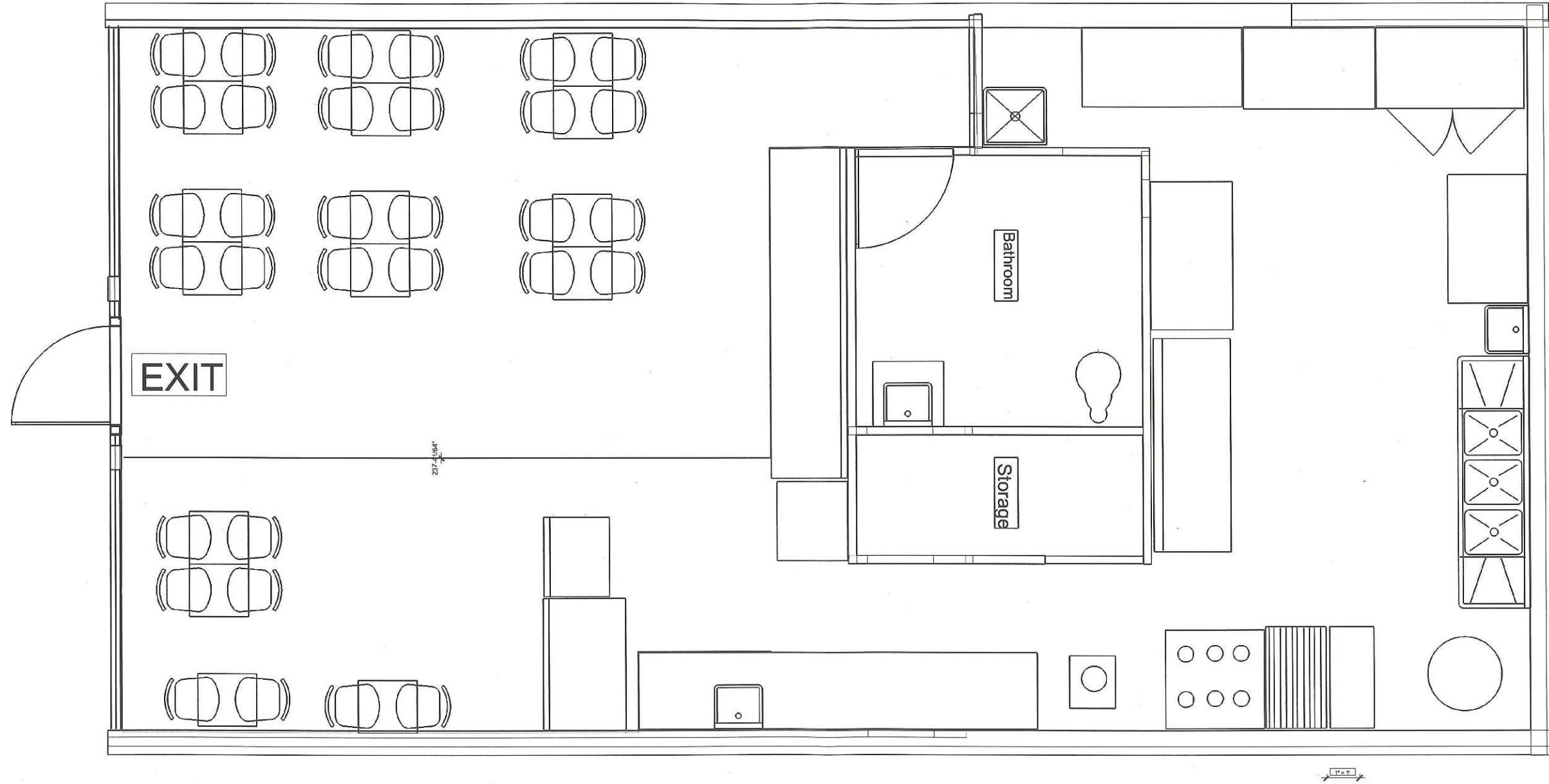
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PROJECT
ABC TYPE 41
APPLICATION

Disription
Liberty Plaza
Site Plan
MOH Kitchen

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02



Description
MOH Kitchen
FLOOR PLAN

PROJECT
ABC TYPE 41
APPLICATION

ISSUE
07.07.2015

CLIENT
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DBA MOH KITCHEN

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